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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,719	05/16/2001	Devin Eugene Mix	12929.1059US01	2781

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EXAMINER

JULES, FRANTZ F

ART UNIT PAPER NUMBER

3617

DATE MAILED: 03/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,719

Applicant(s)

MIX ET AL.

Examiner

Frantz F. Jules

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10, 17 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-7, 11, 12, 14-16, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

CI in Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11, 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hess et al (US 6,047,489).

Claims 11, 14-15

Hess et al'489 teach all the limitations of claims 11, 14-15 by showing in figs 1-2 a flame simulation apparatus (10) comprising a translucent screen (42) having a front surface and a back surface, at least one bobble-flame constituted by slit (66) in the flame effect element (58) coupled to a support panel, a device (60) that moves the bobble-flame as per the disclosure of column 4, lines 43-53, and a light source (30) to reflect the light off of the bobble-flame (66) and onto the back surface (46) of the translucent screen (42) to generate an image of a flickering flame effect that is viewable from the front surface of the translucent screen as disclosed in column 4, lines 54-63.

The device comprises a blower (60) positioned to blow air upon and move the at least one bobble-flame (66) as required by claim 14.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 12, 16, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hess et al'489 in view of Morton.

Claims 1-7, 12, 16, 18-19

Hess et al teach all the limitations of claims 1-7, 12, 16, 18-19 except for an apparatus for image display comprising a lenticular screen with a movable image layer by a motion imparting device positioned behind the front panel of a fireplace. Morton discloses a lenticular screen with a movable image layer by a motion imparting device in an apparatus for image display, see abstract section, figs. 1-9, column 4, lines 1-67. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Hess et al to include the use of a lenticular screen with a movable image layer by a motion imparting device behind the front panel of his advantageous apparatus for image display as taught by Morton in order to protect the lenticular screen and image layer assembly from being damage while increasing the number of images that can be displayed.

Allowable Subject Matter

5. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 8-10, 17, and 20 stand allowable.

Response to Arguments

7. Applicant's arguments filed 01/27/03 have been fully considered but they are not persuasive.

A. Summary of applicant's argument

In the amendment, applicant traversed the rejection of the newly amended claims 1-7, 11-12, 14-16, 18-19 for the following reasons:

1. The reference cited in the 102 rejection, Hess et al, does not disclose reflecting light off of the flame element (58) as light source (30) simply pass through the slits in the flame effect element (58) to simulate a flame effect.
2. The references cited in the rejection cannot be properly combined to yield applicant's invention as no motivation for the combination has been provided by Hess.

B. Response to applicant's argument

1. Regarding applicant's argument number 1, it should be noted that independent claim 11 simply requires "a light source to reflect light off of the bobble-flame and onto the back surface of the translucent screen to generate an image of a flickering flame effect that is viewable from the front surface of the translucent screen". This limitation is fully met by Hess et al which discloses a light source (30) to reflect light off of the bobble-flame constituted by slit(s) (66) of the flame effect element (58). Images from the flame effect element (58) are then reflected back onto the back surface (46) of the translucent screen (42) to generate an image of a flickering flame effect that is viewable from the front surface of the translucent screen as disclosed in column 4, lines 54-59.
2. Regarding applicant's argument number 2, it should be noted that the combination rejection was based on a teaching of a lenticular screen with a movable image layer by

a motion imparting device positioned behind the front panel of an apparatus for image display that is disclosed by Morton. It is evident that Morton deals with an apparatus for displaying image which is similar to what Hess et al is doing except for the fact that Hess et al is a fireplace. Thus, a fireplace is simply one application of the apparatus being claimed comprising a front panel, a lenticular screen with a movable image layer by a motion imparting device positioned behind the front panel. A person of ordinary skill in the art would have been motivated to use the teaching of a lenticular screen with a movable image layer by a motion imparting device positioned behind the front panel of disclosed by Morton into Hess et al and come up with the claim invention for the various reason listed above.

It is also important to note that one of ordinary skill in the art motivation to combine references does not have to come from either one of the prior arts of record as applicant seems to argue.

Conclusion

8. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Gottfried-Gottfried et al, Higuchi et al, Steenblik et al are cited to show related apparatus having phase change material.

Seki, Gulick, Boden are cited to show a related system having a lenticular screen.

Martin et al, Rehberg, Hess et al'636, Bristow are cited to show related fireplace system having flame simulation apparatus.

Kumagai is cited to show a related image display device having a movable image screen.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Frantz F. Jules
Examiner
Art Unit 3617

FFJ

March 8, 2003



S. JOSEPH MORANO
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